

1. LICENSE; RESTRICTIONS

1.1 License. Subject to the terms and conditions of this Agreement, Birst hereby grants to OEM a non-exclusive, non-transferable (except as provided as an assignment in Section 11), non-sublicensable license to use the Birst Solution to provide the Birst Solution to OEM's end user customers only (i) as incorporated into, or bundled with, OEM's own service offering that adds substantial value to the bundle ("Integrated Solution"), (ii) in accordance with the manner and subscription period specified in the Order Form, (iii) and in accordance with all applicable laws and regulations. For avoidance of doubt, the Birst Solution shall only be provided by OEM to its end user customers as part of OEM's Integrated Solution and not on a standalone basis. As specified on the Order Form, OEM shall only deploy the Birst Solution in one of the following manners:

- (a) as part of a Birst-hosted offering (software-as-a-service) ("Birst Hosted Offering"); or
- (b) as part of an OEM-hosted offering (software-as-a-service) ("OEM Hosted Offering"); or
- (c) as part of an OEM software distribution directly to its end user customer (on-premises at the end user customer's facilities) ("Customer Premises Offering").

For clarity, the Birst Hosted Offering is hosted by Birst, and in such case, no software code for the Birst Solution will be provided to OEM or any end user customer hereunder. With respect to the Birst Hosted Offering only, Birst will provide OEM with the hosting service levels described at <http://www.birst.com/pdf/4826> ("SLA").

With respect to the OEM Hosted Offering and Customer Premises Offering, only object code will be provided to OEM. OEM has no rights to any Birst Solution source code.

All distributions of the Birst Solution to OEM's end customers (either as a Birst Hosted Offering, OEM Hosted Offering or Customer Premises Offering) must be pursuant to written terms and conditions at least as protective of Birst and the Birst Solution as those set forth in Exhibit A.

All rights not expressly granted to OEM herein are reserved by Birst.

1.2 *Restrictions.* OEM will not (and will not allow any third party to): (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying structure, ideas, or algorithms of any part of the Birst Solution; (ii) modify, translate, or create derivative works based on any part of the Birst Solution; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to any part of the Birst Solution, except as expressly permitted in Section 1.1; (iv) use the Birst Solution for

timesharing or Birst Solution bureau purposes or otherwise for the benefit of a third party (excepting OEM's end customer as authorized in Section 1.1); (v) remove or otherwise alter any proprietary notices or labels from the Birst Solution or any portion thereof; or (vi) use the Birst Solution to create any other product or solution.

1.3 *Ownership.* Except for the rights expressly granted under this Section 1, Birst retains all right, title, and interest in and to the Birst Solution (and all software, products, works, and other intellectual property created, used, or provided by Birst for the purposes of this Agreement). To the extent OEM provides Birst with any feedback relating to the Birst Solution (including, without limitation, feedback related to usability, performance, interactivity, bug reports and test results ("Feedback")), Birst shall own all right, title and interest in and to such Feedback (and OEM hereby makes all assignments necessary to achieve such ownership).

2. SUPPORT

Subject to OEM's payment of all applicable fees, Birst will provide OEM with the support services described at <http://www.birst.com/pdf/4821> ("Support Terms"). Any additional services (such as professional configuration services, implementation services, customizations, training, etc.) shall be provided upon mutual agreement of the parties and, unless otherwise set forth in an Order Form, will be charged at Birst's then-current rates ("Other Services").

3. PAYMENT OF FEES

OEM will pay Birst the fees for the Birst Solution as set forth in the Order Form ("Fees"). Unless otherwise specified in the Order Form, all Fees will be invoiced in advance and all invoices issued under this Agreement are payable in U.S. dollars within thirty (30) days from date of invoice. Birst may, in its discretion, increase Fees at the beginning of each renewal period; provided that, Birst provides OEM with notice of such increase at least sixty (60) days prior to the beginning of the applicable renewal period. If Birst does not provide such notice, the Fees for the renewal term will be the same as the Fees for the immediately preceding term. Unpaid invoices are subject to a finance charge of 1.5% per month or the maximum permitted by law, whichever is lower, plus all expenses of collection. OEM shall be responsible for all (i) taxes associated with Birst Solution other than taxes based on Birst's net income, and (ii) Birst's costs of collection in the event of OEM's delinquent payment. All Fees paid are non-refundable (except as otherwise expressly set forth in the Order Form) and not subject to set-off.

4. TERM; TERMINATION

Subject to earlier termination as provided below, this Agreement shall commence on the Effective Date and continue for the initial subscription period specified in the Order Form; thereafter this Agreement will automatically renew for consecutive periods each equal

in length to the initial subscription period, unless either party provides the other party with written notice of non-renewal at least thirty (30) days prior to the end of the then current period. Either party may terminate this Agreement in the event the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days from receipt of written notice thereof. In the event this Agreement terminates for any reason other than OEM's failure to pay amounts owed, all licenses granted to end user customers will survive for the remainder of their then-current subscription term (not to exceed twelve (12) months from termination of this Agreement). The following provisions will survive termination of this Agreement: Sections 1.1 (only to the extent expressly set forth herein), 1.2, 1.3, 3, 4, 5, 6, 7, 8, 9 and 11. Upon termination, all Birst Confidential Information (including, without limitation, code) will be returned to Birst and OEM will, upon Birst's request, certify in writing that it has complied with Section 1.2 and Section 5.

5. CONFIDENTIALITY

During the term of this Agreement, each party (a "Disclosing Party") may provide the other party (a "Receiving Party") with confidential and/or proprietary materials and information ("Confidential Information"). All materials and information provided by Disclosing Party to Receiving Party and identified at the time of disclosure as "Confidential" or bearing a similar legend, and all other information that the Receiving Party reasonably should have known was the Confidential Information of the Disclosing Party, shall be considered Confidential Information; for the avoidance of doubt, the Birst Solution and terms of this Agreement are Confidential Information of Birst. Receiving Party shall maintain the confidentiality of the Confidential Information and will not disclose such information to any third party without the prior written consent of Disclosing Party. Receiving Party will only use the Confidential Information internally for the purposes contemplated hereunder. The obligations in this Section 5 shall not apply to any information that: (i) is made generally available to the public without breach of this Agreement, (ii) is developed by the Receiving Party independently from the Disclosing Party's Confidential Information, (iii) is disclosed to Receiving Party by a third party without restriction, or (iv) was in the Receiving Party's lawful possession prior to the disclosure to the Receiving Party and was not obtained by the Receiving Party either directly or indirectly from the Disclosing Party. Receiving Party may disclose Confidential Information as required by law or court order; provided that, Receiving Party provides Disclosing Party with prompt written notice thereof and uses its best efforts to limit disclosure. At any time, upon Disclosing Party's request, Receiving Party shall return to Disclosing Party all Disclosing Party's Confidential Information in its possession, including, without limitation, all copies and extracts thereof. Notwithstanding the foregoing, (a) Receiving Party may disclose Confidential Information to any third-party to the limited extent necessary to

exercise its rights, or perform its obligations, under this Agreement; provided that, all such third parties are bound in writing by obligations of confidentiality and non-use at least as protective of the Disclosing Party's Confidential Information as this Agreement and (b) all Feedback shall be solely Birst Confidential Information.

6. WARRANTY; DISCLAIMER

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. In addition, Birst warrants to OEM that, (i) for ninety (90) days from delivery to OEM, the Birst Solution will conform with the applicable Birst-provided documentation in all material respects, and (ii) all Other Services will be performed in a professional and workmanlike manner. With respect to any breach of Section 6(i), Birst shall use commercially reasonable efforts to promptly correct the applicable defects, provided that, Customer notifies Birst in writing of such defect within the applicable warranty period. With respect to any breach of Section 6(ii), Birst shall re-perform the Other Services at no additional charge to Customer in order to comply with the warranty, provided that Customer notifies Birst in writing of any non-conformance within a reasonable amount of time after discovery. The remedies set forth herein shall be Customer's exclusive remedies, and Birst's sole liability, with respect to any breach of this Section 6. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, BIRST DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. BIRST DOES NOT MAKE ANY WARRANTY THAT THE BIRST SOLUTION SHALL BE ERROR-FREE OR WITHOUT INTERRUPTION OR AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE BIRST SOLUTION.

7. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, NEITHER PARTY, SHALL BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, UNDER ANY LEGAL OR EQUITABLE THEORY, FOR ANY: (A) ERROR OR INTERRUPTION OF USE, LOSS OR INACCURACY OR CORRUPTION OF DATA, THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, OR TECHNOLOGY, OR LOSS OF BUSINESS; (B) INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; (C) MATTERS BEYOND SUCH PARTY'S REASONABLE CONTROL; OR (D) AMOUNTS IN THE AGGREGATE THAT EXCEED THE FEES PAID BY OEM TO BIRST DURING THE SIX (6) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION ACCRUES (PROVIDED THAT, IF NO FEES ARE PAID, SUCH AMOUNTS SHALL BE LIMITED TO \$1,000.00). THE

LIMITATIONS ON LIABILITY CONTAINED HEREIN SHALL NOT APPLY TO BREACH(ES) OF SECTIONS 1.2 ("RESTRICTIONS") AND 5 ("CONFIDENTIALITY") OR CLAIMS UNDER SECTION 8 ("INDEMNITY").

8. INDEMNITY

Birst will indemnify, defend and hold OEM harmless from and against all third party claims (and all resulting, to the extent payable to third parties: damages, cost and expenses, including reasonable attorneys' fees) arising from infringement by the Birst Solution (in the form provided by Birst) of any third party's U.S. intellectual property rights; provided that, OEM provides Birst with prompt written notice of all claims and threats thereof, sole control of all defense and settlement activities, and all reasonably requested assistance with respect thereto. Birst will not be responsible for any settlement it does not approve in writing. In the event the Birst Solution (or any part thereof) is held to, or Birst may be alleged to, infringe, Birst will have the option, at its discretion, to (i) modify the allegedly infringing Birst Solution to be non-infringing, (ii) obtain for OEM a license to continue using the Birst Solution as authorized hereunder, or (iii) if neither (i) nor (ii) are reasonably practicable, terminate this Agreement on thirty (30) days' notice and refund to OEM the unused portion of the fees paid in advance under this Agreement for such infringing Birst Solution. THIS SECTION 8 SETS FORTH BIRST'S SOLE OBLIGATION AND OEM'S SOLE REMEDY IN THE EVENT OF VIOLATION OF THIRD PARTY RIGHTS.

9. NON-SOLICITATION

Until one (1) year after termination of this Agreement, OEM will not encourage or solicit any employee or consultant of Birst to leave Birst for any reason.

10. PUBLICITY

The parties agree to issue a joint press release announcing OEM's launch of the Birst Solution within sixty (60) days from the date on which OEM first commercially offers the Integrated Solution (each party's approval of such press release will not be unreasonably withheld or delayed). OEM grants Birst the right to use OEM's name and logo on Birst's website, in Birst marketing material, and as part of a Birst OEM list.

11. MISCELLANEOUS

The parties will comply with the additional terms and conditions (if any) set forth in the Order Form. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable or transferable by a party except with the other party's prior written consent; provided that, a party may transfer and assign its rights and obligations under this Agreement without consent to a successor to all or substantially all of its assets or business to which this Agreement relates. This Agreement, including any attached Order Forms or exhibits, is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement, and all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement. Any notices in connection with this Agreement will be in writing and sent by first class US mail, confirmed facsimile or major commercial rapid delivery courier services to the address specified on the Order Form (or such other address as may be properly specified by written notice hereunder). This Agreement shall be governed by the laws of the State of California, without regard to the conflict of law provisions thereof. Except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any competent court), any dispute arising under this Agreement shall be finally settled in accordance with the Comprehensive Arbitration Rules of the Judicial Arbitration and Mediation Services, Inc. ("JAMS") by three arbitrators appointed in accordance with such rules. The arbitration shall take place in Santa Clara, California, USA, in the English language and the arbitral decision may be enforced in any court. With respect to all disputes arising in relation to this Agreement, but subject to the preceding arbitration provision, the parties consent to exclusive jurisdiction and venue in the state and Federal courts located in San Francisco, California. The prevailing party in any action or proceeding to enforce this Agreement will be entitled to recover costs and attorneys' fees.

Exhibit A**Required Minimum End User Terms****1. ACCESS RIGHTS; RESTRICTIONS**

1.1 *Access.* Subject to customer's compliance with the terms and conditions of this Agreement, OEM ("OEM") provides access to and use of the Birst Solution only as incorporated into, or bundled with, OEM's own service offering that adds substantial value to the bundle ("Integrated Solution"), during the term of this Agreement. For avoidance of doubt, OEM shall provide access to and use of the Birst Solution only as part of OEM's Integrated Solution and not on a standalone basis.

1.2 *Restrictions.* Customer will not (and will not allow any third party to): (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Birst Solution; (ii) modify, translate, or create derivative works based on the Birst Solution; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Birst Solution; (iv) use the Birst Solution for timesharing or service bureau purposes or otherwise for the benefit of a third party (excepting Customer's end users as part of the purpose contemplated in Section 1.1 above); (v) remove or otherwise alter any proprietary notices or labels from the Birst Solution or any portion thereof, or (vi) use the Birst Solution to create any other product or service. Customer will use the Birst Solution only in compliance with (i) this Agreement, (ii) the rights granted hereunder, and (iii) in accordance with all applicable laws and regulations.

1.3 *Ownership.* Except for the rights expressly granted under this Section 1, Birst ("Birst" or "OEM'S licensor") retains all right, title, and interest in and to the Birst Solution (and all data, software, products, works, and other intellectual property created, used, or provided by Birst for the purposes of this Agreement). To the extent Customer provides OEM or OEM's licensors with any feedback relating to the Birst Solution (including, without limitation, feedback related to usability, performance, interactivity, bug reports and test results) ("Feedback"), OEM's licensor shall own all right, title and interest in and to such Feedback (and customer hereby makes all assignments necessary to achieve such ownership).

2. CONFIDENTIALITY

During the term of this Agreement, each party (a "Disclosing Party") may provide the other party (a "Receiving Party") with confidential and/or proprietary materials and information ("Confidential Information"). All materials and information provided by Disclosing Party to Receiving Party and identified at the time of disclosure as "Confidential" or bearing a similar legend, and all other information that the Receiving Party reasonably should have known was the Confidential Information of the Disclosing Party, shall be considered Confidential Information; for the avoidance of doubt, the Birst Solution and terms of this Agreement are Confidential Information of Birst. Receiving Party shall maintain the confidentiality of the Confidential Information and will not disclose such information to any third party without the prior written consent of Disclosing Party. Receiving Party will only use the Confidential Information internally for the purposes contemplated hereunder. The obligations in this Section shall not apply to any information that: (i) is made generally available to the public without breach of this Agreement, (ii) is developed by the Receiving Party independently from the

Disclosing Party's Confidential Information, (iii) is disclosed to Receiving Party by a third party without restriction, or (iv) was in the Receiving Party's lawful possession prior to the disclosure to the Receiving Party and was not obtained by the Receiving Party either directly or indirectly from the Disclosing Party. Receiving Party may disclose Confidential Information as required by law or court order; provided that, Receiving Party provides Disclosing Party with prompt written notice thereof and uses its best efforts to limit disclosure. At any time, upon Disclosing Party's request, Receiving Party shall return to Disclosing Party all Disclosing Party's Confidential Information in its possession, including, without limitation, all copies and extracts thereof. Notwithstanding the foregoing, (a) Receiving Party may disclose Confidential Information to any third-party to the limited extent necessary to exercise its rights, or perform its obligations, under this Agreement; provided that, all such third parties are bound in writing by obligations of confidentiality and non-use at least as protective of the Disclosing Party's Confidential Information as this Agreement and (b) all Feedback shall be solely Birst's "Confidential Information."

3. **Termination.** This license is effective for the duration indicated in the license agreement, unless terminated earlier. OEM may immediately terminate this license agreement in the event Customer violates any of the terms of this license agreement. Upon termination of this license agreement, Customer shall cease using the Birst Solution and documentation and either return the Birst Solution and documentation to OEM or destroy all copies of the Birst Solution and documentation.

4. **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OEM'S LICENSORS HEREBY DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, REGARDING THE USE AND RESULTS OF THE BIRST SOLUTION, OR THAT USE WILL BE UNINTERRUPTED OR ERROR-FREE, AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

5. **Liability Limitations.** TO THE EXTENT NOT PROHIBITED BY LAW, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY, OEM'S LICENSOR WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) DIRECT DAMAGES; (II) ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS; (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES; (IV) LOSS, INACCURACY, OR CORRUPTION OF DATA OR INTERRUPTION OF USE; (V) ANY MATTER BEYOND ITS REASONABLE CONTROL. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.